UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND (PROVIDENCE)

ALBERT L. GRAY, Administrator of the Estate of Derek J. Gray, and on behalf of JANI L. GRAY-MCGILL, minor child of the decedent, Derek J. Gray, et al.,	§	Civil Action No. 04-CV-312-L
Plaintiffs,	§	
v.	§	Judge: Ronald R. Lagueux
JEFFREY DERDERIAN, et al.,	§	
Defendants.	§	Oral Argument Requested

WPRI'S PARTIAL MOTION TO DISMISS

TO THE HONORABLE COURT:

LIN TELEVISION CORPORATION d/b/a WPRI-TV[1] (hereinafter "WPRI" or "Defendant") files this motion to dismiss a part of the Plaintiffs' claims pursuant to Rule 12(b)(6) F.R.C.P. and Rule 12(a)(1) of the Local Rules of The United States District Court For the District of Rhode Island as follows:

I. INTRODUCTION

WPRI has been sued for negligence as a result of the alleged actions of two of its employees on the night of the fire. The first employee is Defendant Jeffrey Derderian (hereinafter "The Reporter" or "Derderian") who was, as of February 20, 2003, a reporter for WPRI. The second employee is Defendant Brian Butler (hereinafter "The Cameraman" or "Butler") who was, as of February 20, 2003, a cameraman for WPRI. This motion seeks dismissal only as to the negligence claim against WPRI derived from the actions of the Reporter and not the Cameraman.

[1] For purposes of this motion, we assume that LIN Television Corporation owns WPRI. In fact, a different corporation, TVL Broadcasting, Inc., is WPRI's owner.

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II. GROUNDS FOR MOTION

The grounds for the motion are as follows:

1) An essential element of Plaintiffs' negligence claim is lacking as a matter of law because there is no duty for a television station to immediately broadcast hazardous conditions which one of its reporters has allegedly learned in the course of his newsgathering activities and;

2) Any such duty imposed by law would be unconstitutional under The First Amendment to The United States Constitution and Article I, Sections 20 and 21 of The Rhode Island Constitution as a state regulation of editorial control and content.

III. WPRI INCORPORATES ITS MEMORANDUM

WPRI is filing contemporaneously herewith its Memorandum of Law in Support of this Motion which it incorporates herein by reference.

WHEREFORE, WPRI prays that the Plaintiffs' negligence claim derived from The Reporter's alleged conduct be in all things denied and for such further relief at law or in equity as to which WPRI is entitled.

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ORAL ARGUMENT REQUESTED

Defendants request oral argument for the reasons stated in this Motion and the accompanying Memorandum. Said oral argument not to exceed one hour.

CERTIFICATE OF SERVICE

This is to certify that on this 25th day of August, 2004, a true and correct copy of WPRI's Partial Motion To Dismiss was served, via Certified Mail, Return Receipt Requested, upon:

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UNITED STATES DISTRICT COURT
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ALBERT L. GRAY, Administrator of the Estate of Derek J. Gray, and on behalf of JANI L. GRAY-MCGILL, minor child of the decedent, Derek J. Gray, et al.,	§	Civil Action No. 04-CV-312-L
Plaintiffs,	§	
v.	§	Judge: Ronald R. Lagueux
JEFFREY DERDERIAN, et al.,	§	
Defendants.	§	

WPRI'S MEMORANDUM OF LAW IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS

TO THE HONORABLE COURT:

LIN TELEVISION CORPORATION d/b/a WPRI-TV[1] (hereinafter WPRI or Defendant) files this memorandum of law in support of its motion to dismiss a part of the Plaintiffs' claims pursuant to Rule 12(b)(6) F.R.C.P. and Rule 12(a)(1) of the Local Rules of The United States District Court For the District of Rhode Island as follows:

I. INTRODUCTION

This case is brought by two hundred twenty-six Plaintiffs against forty-six named Defendants seeking "monetary damages from those individuals and entities responsible for the conditions and actions which resulted in a fire at The Station nightclub in West Warwick, Rhode Island on February 20, 2003, which claimed 100 lives and caused injury to several hundred individuals." Master Complaint (hereinafter "Compl."), Introduction at p. 17.

[1] For purposes of this motion, we assume that LIN Television Corporation owns WPRI. In fact, a different corporation, TVL Broadcasting, Inc., is WPRI's owner.

One of the Defendants and Movant herein, WPRI, is a television station broadcasting over Channel 12 in Providence, Rhode Island. Compl. ¶¶ 446, 448 at p. 99. Its liability is allegedly derived through the purported negligence of two of its employees (Jeffrey Derderian, hereinafter the "Reporter" or "Derderian" and Brian Butler, hereinafter the "Cameraman" or "Butler") who were present at The Station nightclub in West Warwick, Rhode Island on February 20, 2003 when the fire broke out. Compl. ¶ 276 at p. 67. Negligence is the only claim asserted against WPRI. Compl. ¶ 450 at p. 99.

WPRI's Cameraman is alleged to have "impeded the exit of patrons" while he filmed the incident. Compl. ¶ 442 at p. 98. WPRI and Butler, who recorded important video of the fire and actually saved lives that night, including at least one of the Plaintiffs, vehemently deny this allegation. However, WPRI does not move for dismissal at this time regarding the Butler-derived negligence claim, which it has answered.[2]

This motion focuses, instead, on the Plaintiffs' unprecedented assertion that WPRI had a duty to broadcast a news report, "before the fire," describing the allegedly hazardous conditions in the nightclub, purportedly known to the Reporter. The conditions were said to be, over-crowding, lack of adequate and lawful egress, use of non-flame-retardant and defective egg crate foam, and discharge of pyrotechnics by the band (Great White) in close proximity to the walls. Compl. ¶ 277 at pp. 67-68.

No such duty is recognized at common law in Rhode Island or any other jurisdiction (state or federal) and, accordingly, an essential element of Plaintiffs' negligence claim as to the Reporter's conduct is absent as a matter of law. *See, Brandt v. Weather Channel, Inc.*, 42 F.Supp.2d 1344 (S.D. Fla. 1999) ("Plaintiffs seek a novel and unprecedented expansion of the scope of tort law."). Even if such a duty were recognized, it would violate the First Amendment to the United States Constitution

[2] *See*, e.g., *Clift v. Narragansett Television L.P.*, 688 A.2d 805 (R.I. 1996).

and Article I, Sections 20 and 21 of the Rhode Island Constitution as impermissible regulation of the editorial process. *See Pacific Gas and Electric Company v. Public Utilities Commission of California*, 475 U.S. 1, 16 (1986) ("For corporations as for individuals, the choice to speak includes within it the choice of what not to say.") (citing *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974)).

WPRI, therefore, moves for dismissal of the Reporter-derived negligence claim on two grounds: (1) an essential element of Plaintiffs' negligence claim against WPRI is lacking as a matter of law because there is no duty under Rhode Island law for a television station to immediately broadcast a news report about hazardous conditions one of its reporters learns of during the course of a news investigation; and (2) if any such duty were found to exist, it would be constitutionally prohibited.

II. AN ESSENTIAL ELEMENT OF PLAINTIFFS' NEGLIGENCE CLAIM DERIVED FROM THE REPORTER'S CONDUCT IS ABSENT AS A MATTER OF LAW

A. Legal Standard

(i) Failure to State a Claim

The rules for deciding a Rule 12(b)(6) motion are familiar. All material alleged facts are assumed to be true and factual inferences are resolved in favor of the non-movant. The Plaintiffs' pleadings must on their face show, beyond doubt, that the Plaintiffs cannot prove any set of facts that would entitle them to relief. *Medina-Claudio v. Rodriguez-Mateo*, 292 F.3d 31, 34 (1st Cir. 2002).

(ii) Federal Court's Role In Applying State Law

The Plaintiffs' negligence claim arises under Rhode Island state law, and the role of a federal court is limited, in the first instance, to applying those rules of law announced by the highest court of the state. *Blinzler v. Marriott International, Inc.*, 81 F.3d 1148, 1151 (1st Cir. 1996). No Rhode Island court has imposed upon a media defendant the duty advocated by Plaintiffs. When the state

court has not directly addressed the issue, this court must look to analogous state court decisions (*DeFilippo v. NBC, infra* at p. 8), persuasive adjudications by courts of sister states (*A.H. Belo Corp. v. Corcoran, infra* p. 10; *Brandt, infra* pp. 9-10), learned treatises (Sack, Sack on Defamation: Libel, Slander, and Related Problems (3d ed.), §13.8 at pp. 13-60-61)[3] and public policy considerations. (*See* Section II C (3) at p. 7, *infra*). *Blinzler* at 1151.

A federal court is not, however, "free to fashion new theories of recovery under [state] law." *Pittman v. Dow Jones & Company, Inc.*, 834 F.2d 1171 (5th Cir. 1987) (per curiam). The Court's duty is to "apply existing state law, not to adopt innovative theories for the state." *Doddy v. Oxy USA, Inc.*, 101 F.3d 448, 462 (5th Cir. 1996) (citing *Jackson v. Johns-Manville Sales Corp.*, 781 F.2d 394, 396-98 (5th Cir. 1986) (en banc), cert. denied, 478 U.S. 1022 (1986)) (abrogated on other grounds by *Centennial Insurance Co. v. Ryder Truck Rental, Inc.*, 149 F.3d 378, 382 (1998)).

This court should not adopt for Rhode Island what one federal judge (Paine, J.) labeled a "novel and unprecedented expansion of the scope of tort law." *Brandt, supra* at 1345-1346.

B. Material Facts

As part of the legal requirements for filing a motion to dismiss under Rule 12, the Defendant is required to assume the alleged facts to be true. Therefore, for the purpose of this motion only, we accept that the following facts are true, although some of them would be disputed at trial:

[3] As stated in Sack: "Courts have frequently articulated the concern that the specter of unlimited liability could severely hamper the free flow of information and therefore the exercise of First Amendment rights. (Footnote omitted). In the words of the Ninth Circuit: 'Were we tempted to create this duty [that would underlie any such liability], the gentle tug of the First Amendment and the values embodied therein would remind us of the social costs.'" (Footnote omitted).

1. The Reporter was working for WPRI on the night of the fire, investigating and preparing a report on nightclub safety "intended to be aired in the wake of a fatal Chicago nightclub fire."[4] Compl. ¶ 276 at p. 67.

2. The Reporter is also alleged to have been working that night as an employee of DERCO, LLC, the owner of the nightclub. Compl. ¶¶ 273-275 at pp. 66-67.

3. The Reporter is alleged to have known of "several hazardous conditions in The Station nightclub on February 20th prior to 11:00 p.m." Compl. ¶ 277 at p. 67.

4. WPRI failed to report a "newsworthy story," prior to the fire, regarding the hazardous conditions, thereby causing the Plaintiffs' damages and injuries. Compl. ¶ 278 at p. 68, ¶ 449 at p. 99.

C. Rhode Island Law on Duty

The law on the duty element of a negligence action is well settled in Rhode Island. As this Court has explained: "In Rhode Island, 'whether ... a duty exists in a particular factual situation is a question of law for the court's determination.'" *Munsill v. United States*, 14 F. Supp.2d 214, 220 (D.R.I. 1998).

In resolving when a duty exists in a particular case, Rhode Island courts counsel:

> [C]onsideration of 'all relevant factors, including the relationship of the parties, the scope and burden of the obligation to be imposed upon the defendant, public policy considerations and notions of fairness.' (cite omitted) While the foreseeability of harm to the plaintiff resulting from the defendant's conduct is the 'linchpin' in the duty inquiry, (cite omitted) 'foreseeability of injury does not, in and of itself, give rise to a duty.'

Id.

[4] Although for purposes of this motion we assume this fact to be true, for completeness we note that the Chicago nightclub incident referred to was a stampede not a fire. *See*, "Stampede at Packed Chicago Nightclub Leaves 21 Dead," USATODAY.com (Feb. 17, 2003) (http://www.usatoday.com/news/nation/2003-02-17-chicago-club-deaths_x.htm).

Under this or any standard we could not find a case where a court imposed a duty on a news organization to immediately report unsafe conditions one of its reporters learned of during the course of his newsgathering. There is no such case in Rhode Island, but courts outside this jurisdiction have rejected a similar claim, as we discuss, *infra* at pp. 9-10.

The factors cited above articulated by this Court under Rhode Island law to determine whether a duty exists are discussed as follows and plainly militate against recognition of the purported duty to immediately publish.

(1) The Relationship Of The Parties

There is no allegation that the Reporter (as a reporter)[5] had any relationship to the Plaintiffs. Similarly, there is no allegation that, as a reporter, he was responsible for any of the purportedly hazardous conditions in the bar.[6] According to the Complaint, the Reporter's sole connection to the parties, as a reporter, was to the Defendant DERCO, LLC, whose facility he was purportedly investigating.

(2) The Scope And Burden Of The Obligation To Be Imposed Upon The Defendant

A duty to immediately report matters under investigation would impose an almost impossible hardship on broadcasters such as WPRI. For instance, in this case, the allegations are that one of the hazardous conditions (over-crowding) occurred "prior to 11 p.m." Compl. ¶ 277 at pp. 67-68. When was WPRI required - under Plaintiffs' theory - to report this condition? The Court can take notice that nightly newscasts occur at 6 p.m. and 11 p.m. Did WPRI have a duty to break into its network programming to report the developing crowd? We could find no case which imposed this duty on a television station or anyone else.

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[5] The Reporter is also alleged to be an employee of the owner of the nightclub and we express no opinion as to his relationship to the bar's patrons (the Plaintiffs) in that capacity, nor is that relationship, if any, material to this motion.

[6] On February 20, 2003 Derderian had just completed his fourth day of work at WPRI. *See* WPRI's answer ¶ 276 at p. 70. ("Defendants admit that Derderian began his employment with WPRI on February 17, 2003 and was working for WPRI on February 20, 2003 until 6-6:30 p.m.").

Hindsight being what it is, the tragedy of the West Warwick fire is patent. But a rushed news report which is inaccurate or incomplete can subject a broadcaster to liability for defamation or business disparagement. A television or newspaper should not face the Hobson's Choice of facing potential litigation from a disparaged business if no tragedy occurs or lawsuits from injured parties if it does. In such a world, the choice for the prudent broadcaster would be not to investigate, thus chilling speech on important and newsworthy topics such as, for example, safety in public places.

(3) Rhode Island Public Policy Disfavors This Claim

Rhode Island public policy disfavors Plaintiffs' novel theory as expressed through legislative enactments and decisions from the State Supreme Court.

For example, the Rhode Island legislature, some 48 years ago, determined that insurance inspectors or advisory services have no liability to those injured in accidents for any act or omission in the course of performing the inspection. *See* R.I.G.L. § 27-8-15. If insurance inspectors, who have an active relationship with the insured and perform affirmative acts of inspection, are immunized from damages, one cannot fathom how Rhode Island public policy would favor subjecting constitutionally protected activity (the act of deciding what to publish) to (in this case especially) potentially ruinous liability.

Moreover, Rhode Island public policy is especially solicitous of newsgathering activities and free speech. The legislature has enacted laws protecting news sources (R.I.G.L. § 9-19.1-2) and provides constitutional immunity for the "exercise of his or her right of petition or of free speech under the United States or Rhode Island constitutions in connection with a matter of public concern." *See* R.I.G.L. § 9-33-2(a). The Rhode Island Constitution states that "The liberty of the press [is] essential to the security of freedom" (Art. I, § 20) and "No law abridging the freedom of speech shall be enacted." (Art. I, § 21).

In *DeFilippo v. National Broadcasting Co., Inc.*, 446 A.2d 1036 (R.I. 1982), the Rhode Island Supreme Court refused on First Amendment grounds to allow a suit against NBC which had allegedly "failed to adequately warn and inform ... plaintiff" that a stunt performed on The Johnny Carson Show might be dangerous. The Court noted the very self-censorship concern raised by this motion as follows: "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter or its content." *Id.* at 1042. As in *DeFilippo*, the broadcaster has no duty to its viewers to immediately run a news report about hazards of which one of its employees knows.

(4) Fairness

WPRI recognizes the dimensions of this tragedy and has enormous sympathy for the legitimate victims and their families. It understands too the desire on the part of Plaintiffs' counsel to create as deep a pool of money from as many pockets as possible. But fairness does not require creating an overbroad new legal duty with ominous implications for constitutionally protected activity with the accompanying prospect of ruinous liability for one of Rhode Island's most vibrant and respected voices. Fairness requires that the Plaintiffs be left to pursue those Defendants against whom the law does provide a remedy without regard to the depth of their pockets.

(5) Foreseeability

Foreseeability is certainly absent here. Is it foreseeable that the Plaintiffs would be injured, "resulting from" WPRI's failure to immediately run a news story about the developing crowd and other allegedly hazardous conditions when there is no allegation that the Plaintiffs were watching Channel 12 that night? *See Munsill v. United States*, 14 F. Supp.2d at 220. The answer is, of course, self-evidently "No."

(6) Other jurisdictions

There are very few cases where Plaintiffs' theory has been tested, but in each such instance, the theory was rejected.

In *Brandt v. Weather Channel, Inc.*, 42 F.Supp.2d 1344 (S.D. Fla. 1999), the surviving spouse of a boater, who was thrown from his fishing vessel and drowned during a storm, sued The Weather Channel. She claimed that The Weather Channel failed to report what the station knew: that small craft warnings had been issued. Her husband, who watched The Weather Channel that day, was alleged to be a victim of the broadcaster's negligent failure to broadcast the warnings. The Court granted the television station's 12(b)(6) motion to dismiss as follows:

> In this case, the Plaintiffs seek a novel and unprecedented expansion of the scope of tort law: to impose on a television broadcaster of weather forecasts a general duty to viewers who watch a forecast and take action in reliance on that forecast. As the Defendant points out, if the court were to impose such a duty under either a breach of contract or tort theory, the duty could extend to farmers who plant their crops based on a forecast of no rain, construction workers who pour concrete or lay foundation based on the forecast of dry weather, or families who go to the beach for a weekend based on a forecast of sunny weather. The court further notes that if it were to impose a duty upon a weather broadcaster for a faulty broadcast, such a duty could be extended to non-weather related broadcasts such as traffic reports upon which individuals rely to arrive timely to scheduled events. It is clear that to impose such a duty would be to chill the well established first amendment rights of the broadcasters. It is well established that mass media broadcasters and publishers owe no duty to the general public who may view their broadcasts or read their publications. *First Equity Corp. v. Standard & Poor's Corp.*, 869 F.2d 175 (2d Cir. 1989) (publisher of financial information not liable under Florida law to subscriber for negligent misrepresentation); *Winter v. G.P. Putnam's Sons*, 938 F.2d 1033, 1038 (9th Cir. 1991) (publisher owed no duty to mushroom enthusiasts who became violently ill after eating wild mushrooms deemed safe by publisher's book); *Jones v. J.B. Lippincott Co.*, 694 F.Supp. 1216, 1218 (D.Md. 1988) (publisher of medical textbook not liable under products liability theory to nursing student injured when following treatment prescribed by textbook); *Cardozo v. True*, 342 So.2d 1053, 1056 (Fla.App.2d Dist. 1977) (publisher of cookbook not liable to

purchaser of book for breach of warranty for failure to warn of dangers of poisonous ingredients in recipe).

Id. at 1345-1346.

This case is even more attenuated than *Brandt*. The Plaintiffs here - unlike the boater - were not watching television that night - they were at the nightclub listening to live music. *See*, e.g., Compl. ¶ 1 at p. 17 (Plaintiff "was lawfully on the premises of The Station nightclub") and ¶ 328 at p. 77.

In *A.H. Belo Corp. v. Corcoran*, 52 S.W.3d 375 (Tex. App.-Houston [1st Dist.] 2001, pet. denied), a television reporter obtained an interview with a parent who had abducted her child in violation of a custody order. The child was present at the interview.

The father, on behalf of himself and the child, subsequently sued the television station on a number of theories, including negligence, claiming it was negligent not to report the location of the child. As here, the television station filed a motion claiming that it had no duty to broadcast such a report. The Texas Court of Appeals agreed, holding: "[The television station] did not create the situation at issue - Brittany's abduction. In addition, there was no special relationship that created a duty. Under these facts, we hold that appellants had no duty to appellees." *Id.* at 382-383.

The cases cited above all reject the theory advanced by Plaintiffs under a no duty analysis and this Court should follow their well reasoned lead.

III. THE ALLEGED DUTY TO REPORT IS UNCONSTITUTIONAL

WPRI attempts to fairly and accurately report the news within time, budget and legal restraints. Its award winning coverage of this fire is testament to that. But WPRI, and all media, have a constitutional right of editorial control. Put another way, any law requiring WPRI to broadcast particular stories is unconstitutional under the First Amendment and Article I, Sections 20

and 21 of the Rhode Island Constitution. The seminal case is *Miami Herald Publishing Co. v. Tornillo, supra* at p. 3.

In *Tornillo*, the Florida legislature enacted a statute requiring newspapers to publish articles about political candidates in certain circumstances. The United States Supreme Court found the statute unconstitutional holding:

> A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials - whether fair or unfair - constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time. Accordingly, the judgment of the Supreme Court of Florida is reversed.

418 U.S. at 258.

Since *Tornillo*, there have been virtually no attempts to force the news media to report matters which, in the exercise of editorial judgment, they decline to publish. Rhode Island rejected this theory on First Amendment grounds in *DeFilippo, supra* at 8. We could find only one other case which remotely parallels the Plaintiffs' theory and Judge Brieant of the United States District Court for the Southern District of New York soundly and persuasively rejected the claim.

In *Sluys v. Gribetz*, 842 F. Supp. 764 (S.D.N.Y. 1994), the plaintiffs filed a civil rights action against a district attorney who tried to indict a newspaper for incomplete coverage, asserting that the reporting was influenced by an advertising contract executed in favor of the newspaper by a large public utility. The trial judge found the district attorney's actions illegal noting:

> The constitutional protections afforded the dissemination and acquisition of information (news), as pointed out by then Chief Judge Kaufman in *Herbert v. Lando*, 568 F.2d 974, 978 [3 Media L.Rep. 1241] (2nd Cir. 1977, reversed on other grounds, 441 U.S. 153 [4 Media L.Rep. 2575]) recognize that the editorial process also must be safeguarded. In Chief Judge Kaufman's words, "The media is not a

> conduit which receives information and, senselessly, spews it forth. The act of exercise of human judgment must transform the raw data of reportage into a finished product. The Supreme Court cases which grant protection to the editors so shaping the news are unequivocal in their terms."

Judge Brieant continued as follows:

> An editor is confronted each day of publication with a large news "hole", representing those column inches of the publication not devoted to advertising and editorials, which must be filled with news. It is or should be obvious that in making a judgment as to what stories go in the news hole and what stories are spiked, the editor exercises a judgment protected by the First Amendment. Furthermore, we should understand that it is impossible to write a news story without slanting the news in some fashion, by choice of words, punctuation, emphasis, the order in which the facts are stated, or by numerous other ways and means, intentional and unintentional.
>
> Accordingly, it is not possible for anyone, including a grand jury, a trial jury, or a prosecutor, to ascertain whether the news columns of a particular publication have been made "favorable" or "unfavorable" to the management of a public utility, or whether unfavorable news has been withheld as part of a corrupt bargain paid for indirectly by advertising, or as a result of an honest editorial judgment as to the "newsworthiness" of a particular episode concerning the utility, compared to other events competing for coverage on that day.
>
> The theory of any prosecution based on an *agreement* to refrain from publishing adverse news or comment concerning a public figure or an enterprise affected by the public interest such as Orange & Rockland Utilities, must of necessity consider whether the alleged agreement was actually performed. To do this, a court or jury must, of necessity, intrude into the editorial judgment protected by the First Amendment of the Constitution. As stated in *Columbia Broadcasting System v. Democratic National Committee,* 412 U.S. 94 [1 Media L.Rep. 1855], quoted in *Herbert v. Lando,* supra, "For better or worse, editing is what editors are for, and editing is selection and choice of material."

Id. at 769-770.

Whether WPRI in fact had sufficient information that night for the kind of news story Plaintiffs imagine (it did not) is beside the point of this motion. Even if its Reporter had the

information (as Plaintiffs allege), there is no claim for failing to report which can withstand constitutional scrutiny.

IV. CONCLUSION

For the reasons stated, WPRI asks that its motion be granted.

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CERTIFICATE OF SERVICE

This is to certify that on this 25th day of August, 2004, a true and correct copy of WPRI's Memorandum Of Law In Support Of Its Partial Motion To Dismiss was served via Certified Mail, Returned Receipt Requested, upon:

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